



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2016-0322]

RIN 1625-AA08

Special Local Regulation; Cumberland River, Mile 190.5 to 194.0; Nashville, TN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

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**SUMMARY:** The Coast Guard is establishing a special local regulation for all waters of the Cumberland River beginning at mile marker 190.5 and ending at mile marker 194.0. This special local regulation is necessary to provide safety for the participants in the “Thunder on the Cumberland” marine event. This rulemaking restricts transits into, through and within the regulated area unless authorized by the Captain of the Port Ohio Valley or a designated representative. We invite your comments on this rulemaking to assess for future and events and similar rulemakings.

**DATES:** This rule is effective from 9 a.m. on June 17, 2016 through 6 p.m. on June 19, 2016. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2016-0322 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further

instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Ashley Schad, MSD Nashville, Nashville, TN, at 615-736-5421 or at Ashley.M.Schad@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

Fairchild Racing is conducting power boat races daily beginning on June 17, 2016 through June 19, 2016. The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the scheduled race event, consisting of various sized power vessels with at least 50 participants on the Cumberland River, presents potential navigational safety hazards. The Captain of the Port Ohio Valley (COTP) was notified of this event earlier this year and upon receiving and understanding all the details of the racing event, determined that additional safety measures are necessary to protect participants, spectators, and waterway users during this event. It is impracticable to publish an NPRM because we must

establish this special local regulation by June 17, 2016. This rule provides for a comment period and comments received will be reviewed and analyzed to assist the Coast Guard in future rulemakings establishing similar regulatory requirements. The Coast Guard will notify the public and maritime community that this special local regulation will be in effect and of its enforcement periods via broadcast notices to mariners (BNM).

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to establish a special local regulation to protect participants and spectators during the “Thunder on the Cumberland” racing event beginning on June 17, 2016.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The Captain of the Port Ohio Valley (COTP) has determined that potential safety hazards associated with a speed-boat race on a navigable waterway present safety concerns for participants, spectators, and other person and vessels on the waterway. This rule is needed to protect personnel, vessels, and these navigable waters before, during, and after the scheduled racing event.

### **IV. Discussion of the Rule**

This rule establishes a special local regulation which will be enforced from 9 a.m. to 11 a.m. and 12 p.m. to 6 p.m. daily from June 17, 2016 through June 19, 2016, for all waters of the Cumberland River beginning at mile marker 190.5 and ending at mile marker 194.0. The duration of the special local regulation is intended to ensure the safety of vessels, participants, spectators and other waterway users before, during, and after the scheduled event. No vessel or person

would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text for this rule appears at the end of this document.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. This special local regulation restricts transit on the Cumberland River from mile 190.5 to mile 194.0, for 8 hours a day for three days in June; Broadcast Notices to Mariners and Local Notices to Mariners will inform the community of this special local regulation and any changes in the planned schedule so that they may plan accordingly for transits during this short restriction. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted area.

### **B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The

term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulated area may be small entities, for the reasons stated in section V.A above this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management

Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves special local regulated area that would prohibit entry to unauthorized vessels. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **VI. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of future regulations and rulemakings. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION

CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this TFR as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### **PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233

2. Add § 100.35T08-0322 to read as follows:

§ 100.35T08-0322 Special Local Regulation; Cumberland River Mile 190.5 to 194.0, Nashville, TN.

(a) Regulated area. All waters of the Cumberland River beginning at mile marker 190.5 and ending at mile marker 194.0 at Nashville, TN.



(b) Periods of enforcement. This rule will be enforced from 9 a.m. to 11 a.m. and from 12 p.m. to 6 p.m. daily June 17, 2016 through June 19, 2016.

(c) Regulations. (1) Entry into or transit through this area is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels requiring entry into or passage through the area must request permission from the Captain of the Port Ohio Valley or a designated representative. U. S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1-800-253-7465.

(d) Informational broadcasts. The Captain of the Port Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for this special local regulation as well as any changes in the dates and times of enforcement.

Dated: May 26, 2016.

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R. V. Timme,  
Captain, U. S. Coast Guard,  
Captain of the Port Ohio Valley.

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